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COURT OF APPEALS
DIVISION II

NO. 46684-8-II

2015 FEB 27 PM 3:41

STATE OF WASHINGTON

IN THE COURT OF APPEALS FOR THE STATE OF
WASHINGTON DEPUTY

DIVISION II

PUBLIC UTILITY COMMISSION OF OREGON,

Plaintiff/Respondent,

v.

CERTAIN REAL PROPERTY in Pierce County, and the Owners
Thereof and Parties Interested Therein Including JOSEPH YE and
JANICE LOU, husband and wife;

Defendants/Appellants,

and

STAN EFFERDING, an individual; and U.S. BANK NATIONAL
ASSOCIATION,

Defendants,

APPELLANTS' REPLY BRIEF

Appeal from the Judgment of Pierce County Superior Court
The Honorable Elizabeth Martin

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I. INTRODUCTION

Plaintiff/Respondent Public Utility Commission of Oregon's (the "Commission"), in its response to Defendants/Appellants Joseph Ye and Janice Lou's ("Ye" and "Lou," respectively) Opening Brief, insists that Stan Efferding, individually, was a defendant and judgment debtor in the underlying Oregon proceedings – without foundation and despite all the evidence to the contrary. Indeed, the Commission fails to address the evidence cited by Ye and Lou, preferring to proclaim unilaterally that the Oregon judgment was against Mr. Efferding. However, as shown in Ye and Lou's Opening Brief, the evidence shows that the Oregon judgment was against VCI Company, a Washington business corporation. Because Ye and Lou's home was never owned by VCI Company, the trial court should not have granted summary judgment, allowing the Commission to foreclose its judgment lien against the property.

The Commission also argues that the Full Faith and Credit Clause requires the Washington court to enforce the Oregon judgment by allowing the Commission to foreclose on Ye and Lou's home. The Commission claims that Ye and Lou are asking the Court to change or overrule the Oregon judgment. Not so. Contrary to the Commission's argument, Ye and Lou do not seek to change or modify the Oregon judgment. However, the Uniform

Enforcement of Foreign Judgments Act, which is the statutory enactment of the Full Faith and Credit Clause, expressly permits Ye and Lou to assert defenses to the Oregon judgment and challenge its enforcement by foreclosure of their property. Here, as shown, the Commission has invented a sole proprietorship or “dba” belonging to Stan Efferding allegedly called VCI Company to justify its foreclosure of Ye and Lou’s property. But, there is no evidence in the record of any such “dba” and indeed, the **only** evidence in the record is that VCI Company was a Washington business corporation. Thus, the Commission was not entitled to summary judgment allowing it to foreclose on Ye and Lou’s home.

Finally, the Commission attempts to graft an unclean hands requirement (which does not exist) upon the well-settled ability of a Washington court, sitting in equity, to decline to enforce a judgment under appropriate circumstances. Those appropriate circumstances exist here -- the Commission is wrongfully seeking to enforce its judgment against VCI Company by foreclosing on property previously owned by Stan Efferding. For all these reasons, this Court should reverse the trial court’s grant of summary judgment.¹

¹ Also pending before the Court is Ye and Lou’s Motion to Strike
(continued . . .)

II. ARGUMENT

A. The Oregon Judgment is Not Against Stan Efferding

In their Opening Brief, Ye and Lou detailed the evidence in the record establishing that the 2007 administrative proceedings before the Commission were brought against VCI Company, not Stan Efferding, and that the 2007 Order of the Commission was entered against VCI Company, not against Stan Efferding, individually. Appellants' Opening Brief at 9-11.

In response, the Commission argues that when Stan Efferding applied to the Commission to change the name of his approved telephone company from Stan Efferding dba Vilaire to VCI Company, he was merely changing the name of his "dba" from Vilaire to VCI Company. Respondent's Response Brief at 6-7 (citing CP 8 and 13). However, the citations to CP 8 and CP 13 do not support the Commission's statement in its Response Brief. The first citation, CP 8, is to the 2007 Order, which states: "In 2004, the Commission granted Stan Efferding's request to change the name of

(. . . continued)

two sentences from the Commission's Response Brief. The Commission filed a response to the motion stating that it had no objection to the Motion to Strike. As noted in the Motion to Strike, the trial court granted Ye and Lou's earlier motion to strike almost identical statements in the Commission's motion for summary judgment. CP 274-80. The Commission did not object to the motion to strike in the trial court either.

the phone company from Stan Efferding, dba Vilaire, to VCI Company.” CP 13 is the 2010 Order entered by the Marion County Circuit Court. Neither citation supports the assertion by the Commission that VCI Company was a new “dba” for Stan Efferding. Simply put, there is no evidence in the record to support the Commission’s argument on appeal that VCI Company was a “dba” for Stan Efferding.

In fact, the Commission alleged the opposite in its own Complaint commencing the Oregon administrative proceedings, as follows:

6.

On June 29, 2004, Defendant Stan Efferding requested that the Commission change the name of the phone company in its records from Stan Efferding, dba Vilaire to VCI Company. On July 2, 2004, the Commission changed the name of the phone company to VCI Company as requested.²

7.

The Defendant VCI Company is a foreign business corporation that was incorporated in the State of Washington. VCI Company registered to do business

² The Complaint did not allege that the Commission changed the name of the phone company to Stan Efferding dba VCI Company.

in the State of Oregon on December 4,
2003.

CP 21; *see also* CP 176-77. Thus, the Commission admitted in its own Complaint that VCI Company was a Washington business corporation; it nowhere alleged or claimed that VCI Company was also a “dba” for Stan Efferding.

Moreover, the Commission nowhere responds to the other evidence cited in Ye and Lou’s Opening Brief – including the evidence that all of the alleged \$203,391.97 in overpayments were paid to VCI Company, not to Stan Efferding, individually, CP 179, and the evidence that when the Commission recorded its Abstract of Judgment in Pierce County, it listed only one Defendant as an original party to the action – VCI Company. CP 30.

The undisputed evidence thus establishes that VCI Company, a Washington business corporation, was the defendant and judgment debtor in the underlying Oregon proceedings, not Stan Efferding. Thus, an Oregon judgment against VCI Company, domesticated in Washington, could not become a judgment lien against Ye and Lou’s property which was never owned by VCI Company. At a minimum, the evidence creates a question of fact regarding whether Stan Efferding, individually, was a defendant or judgment debtor in the Oregon proceedings. For either reason, this

Court should reverse the trial court's grant of summary judgment allowing the Commission to foreclose its alleged judgment lien on Ye and Lou's property.

B. This Court Has Jurisdiction to Decline to Enforce the Judgment Lien Against Ye and Lou's Property

This Court has jurisdiction to prevent the Commission from coming to Washington, unilaterally proclaiming that its Oregon Judgment was against Stan Efferding, individually, when the evidence shows that the Oregon judgment was against VCI Company, and seeking to enforce an alleged judgment lien against Washington property that was never owned by VCI Company.

The fact that Ye and Lou moved to reopen the Oregon proceedings in the Oregon Circuit Court for Marion County and also moved for leave to intervene and for an order regarding the effect of the 2007 and 2010 Orders does not deprive this Court of jurisdiction over Washington property. CP 155-56. Moreover, contrary to the Commission's characterization in its Response Brief, Ye and Lou did not move to modify the 2007 and 2010 Oregon Orders, but only moved to clarify their effect. The Oregon Circuit Court granted the motion to reopen, but denied the motion to intervene and the motion for order regarding effect of 2007 and

2010 Orders. CP 166-67. Ye and Lou have filed a Notice of Appeal and the appeal is pending. CP 169-74.

Further, the Commission's arguments relying on the Full Faith and Credit Clause are a straw man. Ye and Lou do not dispute that the Full Faith and Credit Clause requires the enforcement of foreign judgments. Ye and Lou are not trying to collaterally attack the Oregon judgment. Ye and Lou do not seek to change or modify the Oregon judgment. Ye and Lou do not seek to overturn the Oregon judgment. *Cf. Brown v. Garrett*, 175 Wn. App. 357, 373 (2013) (holding that a Texas judgment may not be collaterally attacked for the first time in Washington based on a forum selection clause).

However, the Full Faith and Credit Clause does not allow a judgment rendered in one state against a corporation to be registered in another state and then used to foreclose on a property that was never owned by that corporation. Indeed, the Uniform Enforcement of Foreign Judgments Act specifically provides that the foreign judgment "is subject to the same procedures, defenses, set-offs, counterclaims, cross-complaints, and proceedings for reopening, vacating, staying, or extending as a judgment of a superior court of this state" RCW 6.36.025(1). *See also TCAP Corp. v. Gervin*, 163 Wn.2d 645, 653, 185 P.3d 589 (2008) (Texas

judgment that was expired was not enforceable in Washington; court quashed writs of execution).

In this action, Ye and Lou have asserted, as a defense to the Commission's attempt to enforce the Oregon judgment by foreclosing on their Washington home, that the judgment is not a judgment against Stan Efferding, individually, but is a judgment against VCI Company, a Washington business corporation. As shown above and in Ye and Lou's Opening Brief on Appeal, the evidence is overwhelming in support of Ye and Lou's defense. Accordingly, this Court should reverse the trial court's grant of summary judgment to protect Ye and Lou, Washington residents who purchased property in Washington from Stan Efferding, from losing their property to satisfy an Oregon judgment that is owed by VCI Company.

C. The Trial Court Should Have Denied Summary Judgment for Equitable Reasons

The Commission argues in its Response Brief that in order for a court, sitting in equity, to prevent enforcement of a judgment, the court must find that the judgment creditor has acted with unclean hands. While the Commission is correct that the respondent in *Malo v. Anderson*, 62 Wn.2d 813, 384 P.2d 867 (1963), did not have clean hands, the Washington Supreme Court

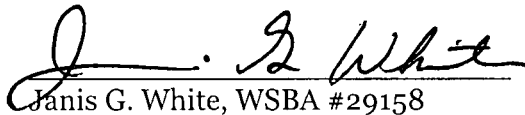
did not hold that a finding of unclean hands was necessary to enjoin the enforcement of a judgment. Rather, the Court stated, “There is no question but that equity has a right to step in and prevent the enforcement of a legal right whenever such an enforcement would be inequitable.” *Malo*, 62 Wn.2d at 816 (quoting *Thisius v. Sealander*, 26 Wn.2d 810, 818, 175 P.2d 619, 623 (1946)); *see also Dale v. Cohn*, 14 Wn.2d 214, 218, 127 P.2d 412 (1942); *Fisch v. Marler*, 1 Wn.2d 698, 709, 87 P.2d 147 (1939).

The facts here demonstrate that it would be inequitable to allow the Commission to foreclose on Ye and Lou’s home pursuant to a judgment lien when the judgment debtor, VCI Company, never owned any interest in the property. Moreover, arguably, the Commission has come to court in Washington with unclean hands. For example, the Commission admitted in its own administrative complaint that Stan Efferding changed the name of his phone company from a dba or sole proprietorship to VCI Company, a Washington business corporation. CP 21; *see also* CP 176-77. The Commission also knows – as its own evidence demonstrates – that the overpayments it seeks to recover were paid to VCI Company, not Stan Efferding. CP 179. Accordingly, there are ample grounds for this Court to apply equity and reverse the trial court’s grant of summary judgment.

III. CONCLUSION

The trial court erroneously granted the Commission's motion for summary judgment. This Court should reverse the Order granting summary judgment and permitting the Commission to foreclose on Ye and Lou's home.

DATED this 27th day of February, 2015.

A handwritten signature in black ink, appearing to read "Janis G. White", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on the date given below I caused to be served the foregoing document entitled **APPELLANTS' REPLY BRIEF** on the following individuals in the manner indicated:

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BY DEPUTY

SIGNED this 27th day of February, 2015, at Seattle, Washington.



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